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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-103

12 **JOHANNA MARIE WEBER,**  
13 **a.k.a. JOHANNA WEBER,**  
14 **a.k.a. JOHANNA MARIE GABRIEL**  
15 **3813 Pasadena Avenue, #8**  
16 **Sacramento, CA 95821**

**A C C U S A T I O N**

15 **Registered Nurse License No. 679012**  
16 **Public Health Nurse Certificate No. 71656**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, MEd., RN ("Complainant") brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),  
22 Department of Consumer Affairs.

23 2. On or about May 9, 2006, the Board issued Registered Nurse License Number  
24 679012 to Johanna Marie Weber, also known as Johanna Weber and Johanna Marie Gabriel  
25 ("Respondent"). Respondent's registered nurse license was in full force and effect at all times  
26 relevant to the charges brought herein and will expire on February 28, 2010, unless renewed.

27 3. On or about April 23, 2007, the Board issued Public Health Nurse Certificate Number  
28 71656 to Respondent. Respondent's public health nurse certificate was in full force and effect at

1 all times relevant to the charges brought herein and will expire on February 28, 2010, unless  
2 renewed.

### 3 STATUTORY AND REGULATORY PROVISIONS

4 4. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that  
5 the Board may discipline any licensee, including a licensee holding a temporary or an inactive  
6 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing  
7 Practice Act.

8 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not  
9 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or  
10 to render a decision imposing discipline on the license. Under Code section 2811, subdivision  
11 (b), the Board may renew an expired license at any time within eight years after the expiration.

12 6. Code section 2761 states, in pertinent part:

13 The board may take disciplinary action against a certified or licensed  
14 nurse or deny an application for a certificate or license for any of the following:

15 (a) Unprofessional conduct, which includes, but is not limited to, the  
16 following:

17 . . . .

18 (f) Conviction of a felony or of any offense substantially related to the  
19 qualifications, functions, and duties of a registered nurse, in which event the record of  
20 the conviction shall be conclusive evidence thereof . . .

21 7. Code section 2762 states, in pertinent part:

22 In addition to other acts constituting unprofessional conduct within the  
23 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a  
24 person licensed under this chapter to do any of the following:

25 (a) Obtain or possess in violation of law, or prescribe, or except as  
26 directed by a licensed physician and surgeon, dentist, or podiatrist administer to  
27 himself or herself, or furnish or administer to another, any controlled substance as  
28 defined in Division 10 (commencing with Section 11000) of the Health and Safety  
Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing  
with Section 11000) of the Health and Safety Code, or any dangerous drug or  
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or  
in a manner dangerous or injurious to himself or herself, any other person, or the  
public or to the extent that such use impairs his or her ability to conduct with safety to  
the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof . . .

8. Code section 2770.11 states:

(a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by a committee. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If a committee determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the committee shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

9. Code section 490, subdivision (a), states:

In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

10. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

11. California Code of Regulations, title 16, section 1444, states, in pertinent part:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare . . .

### **COST RECOVERY**

12. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 **CONTROLLED SUBSTANCE AT ISSUE**

2 13. "Methamphetamine" is a Schedule II controlled substance as designated by Health  
3 and Safety Code section 11055, subdivision (d)(2).

4 **RESPONDENT'S TERMINATION FROM BOARD'S**  
5 **DIVERSION PROGRAM AS A PUBLIC SAFETY RISK**

6 14. On or about September 4, 2008, Respondent was enrolled in the Board's Diversion  
7 Program. Respondent agreed as a condition of her participation in the Board's Diversion Program  
8 that she would comply with all elements of her rehabilitation plan, including abstaining from the  
9 use of mind-altering drugs, except as prescribed by a physician.

10 15. On April 8, 2009, the Diversion Evaluation Committee ("DEC") terminated  
11 Respondent from the Diversion Program as a public safety risk. The DEC based its decision on  
12 the fact that Respondent had relapsed on three occasions as follows and had failed to demonstrate  
13 that she was compliant with her recovery program. Respondent reported that she had relapsed on  
14 April 4, 2009, in that she had used methamphetamine. On February 9, 2009, Respondent's  
15 therapist notified MAXIMUS<sup>1</sup> that Respondent arrived at her outpatient group under the  
16 influence of methamphetamine. Respondent also reported that she relapsed on September 27,  
17 2008, by consuming alcoholic beverages.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Self-Administration of Controlled Substances)**

20 16. Respondent is subject to disciplinary action pursuant to Code section 2761,  
21 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,  
22 subdivision (a), in that on or about February 9, 2009, and April 9, 2009, Respondent self-  
23 administered unknown quantities of the controlled substance methamphetamine without lawful  
24 authority therefor.

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28 <sup>1</sup> The Board's Diversion Program is administered by MAXIMUS.

1 SECOND CAUSE FOR DISCIPLINE

2 (Criminal Convictions)

3 17. Respondent is subject to disciplinary action pursuant to Code sections 2761,  
4 subdivision (f), and 490, subdivision (a), in that Respondent was convicted of crimes which are  
5 substantially related to the qualifications, functions, and duties of a registered nurse, as follows:

6 a. On or about December 3, 2007, in the criminal proceeding titled *People v. Johanna*  
7 *Marie Weber* (Super. Ct. Placer County, 2007, Case No. 62-74637), Respondent pled nolo  
8 contendere to violating Vehicle Code section 23152, subdivision (a) (driving under the influence  
9 of alcohol and/or drugs, a misdemeanor), and admitted that during the commission of the above  
10 offense, she had a passenger who was a minor under the age of 14. The facts and circumstances  
11 in this matter are that Respondent had a blood alcohol content of 0.174% and had her 5-year old  
12 son in the vehicle, while driving on or about October 13, 2007.

13 b. On or about November 21, 2008, in the criminal proceeding titled *People v. Johanna*  
14 *Marie Weber* (Super. Ct. Sacramento County, 2008, Case No. 08M09720), Respondent pled nolo  
15 contendere to violating Vehicle Code sections 23152, subdivision (b) (driving a vehicle while  
16 having 0.08 percent and more, by weight, of alcohol in her blood, a misdemeanor), and 20002,  
17 subdivision (a) (hit and run, property damage, a misdemeanor), and Penal Code section 148,  
18 subdivision (a)(1) (resisting arrest, a misdemeanor). The facts and circumstances of the crime are  
19 as follows: On or about September 1, 2008, while driving under the influence of alcohol with her  
20 son in the car, Respondent fled the scene of a traffic accident and ran a red light exiting the  
21 freeway. She then abandoned her vehicle in the middle of the street. When approached by the  
22 California Highway Patrol, Respondent refused to take a field sobriety test and resisted arrest.  
23 The above incidents occurred while Respondent was on criminal probation for her conviction of  
24 December 3, 2007.

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4. Taking such other and further action as deemed necessary and proper.

DATED: 8/28/09

*Louise R. Bailey*  
LOUISE R. BAILEY, MEd., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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